

APPEAL NO. 231750
FILED JANUARY 25, 2024

This appeal arises pursuant to the Texas Workers' Compensation Act, Tex. Lab. Code Ann. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 18, 2023, with the record closing on October 23, 2023, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable injury on (date of injury); (2) the claimant's horseplay was a producing cause of the claimed injury, but the appellant (carrier) is not relieved of liability for compensation; (3) the carrier's defense on compensability is limited to the defense listed on the Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1), that was filed with the Texas Department of Insurance, Division of Workers' Compensation (Division) on July 12, 2023; (4) the carrier did not assert the defense of horseplay on its PLN-1, that was filed with the Division on July 12, 2023; and (5) the claimant had disability from June 11, 2023, through the date of the CCH. The carrier appeals, contending that their PLN-1 sufficiently raised horseplay as a defense; that because horseplay was a producing cause of his injury the carrier is relieved of liability for compensation; and because the injury is not compensable, the claimant does not have disability. The claimant responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the carrier filed a PLN-1 on July 12, 2023. The claimant testified he was injured on (date of injury), when a motorcycle he was riding fell on his left leg.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.—Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

SUFFICIENCY OF HORSEPLAY DEFENSE

Section 409.022(a) provides that an insurance carrier's notice of refusal to pay benefits under Section 409.021 must specify the grounds for refusal and pursuant to

Section 409.022(b) the grounds for the refusal specified in the notice constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date.

The ALJ correctly determined that the carrier's defense on compensability is limited to the defense listed on the PLN-1 that was filed with the Division on July 12, 2023. At issue was whether the carrier's language on the PLN-1 was sufficient to raise the defense of horseplay. In his discussion of the evidence, the ALJ stated that the carrier was unpersuasive that the language in its PLN-1 was sufficient to raise the defense of horseplay. We disagree.

Although the ALJ correctly noted that the Labor Code does not specifically define horseplay, it is well settled that "magic words are not necessary to contest the compensability" under Section 409.022. Appeals Panel Decision 941755, decided February 13, 1995. Rather, we "look to a fair reading of the reasoning listed to determine if the [contest] is sufficient." *Id.* The PLN-1 in evidence dated July 12, 2023, stated, in part, the following: "The claimant did not sustain an injury in the course and scope of employment. Investigation reveals the injured worker was riding a co-workers [sic] motorcycle recklessly at the time of the injury and was not furthering the affairs of the employer at the time of this incident." The carrier specifically stated in the PLN-1 the claimant's actions of riding a motorcycle in an unsafe manner removed him from the course and scope of employment. We hold that the language included in the carrier's PLN-1 dated July 12, 2023, was sufficient to raise the defense of horseplay. Accordingly, we reverse the ALJ's determination that the carrier did not assert the defense of horseplay in its PLN-1, that was filed with the Division on July 12, 2023. We render a new decision that the carrier did assert the defense of horseplay in its PLN-1, that was filed with the Division on July 12, 2023.

HORSEPLAY

Section 406.032(2) provides that an insurance carrier is not liable for compensation if the employee's horseplay was a producing cause of the injury. In the instant case, there was conflicting evidence as to whether the claimant was involved in horseplay at the time of his injury. As the finder of fact, the ALJ resolves the conflicts in the evidence and determines what facts have been established. The ALJ found that at the time of the injury on (date of injury), the claimant was engaged in horseplay. That finding is supported by the evidence. The ALJ determined that the claimant's horseplay was a producing cause of the claimed injury, but the carrier is not relieved of liability for compensation. We affirm that portion of the ALJ's determination that the claimant's horseplay was a producing cause of the claimed injury. As noted above, we render a

new decision that the carrier did assert the defense of horseplay in its PLN-1, that was filed with the Division on July 12, 2023. Accordingly, we reverse that portion of the ALJ's determination that the carrier is not relieved of liability for compensation and render a new decision that the carrier is relieved of liability for compensation.

COMPENSABILITY

The ALJ determined that the claimant sustained a compensable injury on (date of injury). The ALJ's determination of compensability was based on the ALJ's determination that the carrier did not sufficiently and timely raise the defense of horseplay. We have rendered a decision that the carrier did assert the defense of horseplay in its PLN-1 that was filed with the Division on July 12, 2023, and the ALJ's finding that the claimant was engaged in horseplay at the time of his injury on (date of injury), is supported by sufficient evidence. Given that we have also rendered a decision that the carrier is relieved of liability for compensation, we reverse the ALJ's determination that the claimant sustained a compensable injury on (date of injury), and render a new decision that the claimant did not sustain a compensable injury on (date of injury).

DISABILITY

The ALJ determined that the claimant had disability from June 11, 2023, through the date of the CCH. As we have rendered a new decision that the claimant did not sustain a compensable injury on (date of injury), we reverse the ALJ's determination that the claimant had disability from June 11, 2023, through the date of the CCH and render a new decision that the claimant did not have disability from June 11, 2023, through the date of the CCH.

SUMMARY

We affirm the ALJ's determination that the carrier's defense on compensability is limited to the defense listed on the PLN-1 that was filed with the Division on July 12, 2023.

We affirm that portion of the ALJ's determination that the claimant's horseplay was a producing cause of the claimed injury.

We reverse that portion of the ALJ's determination that the carrier is not relieved of liability for compensation. We render a new decision that the carrier is relieved of liability for compensation.

We reverse the ALJ's determination that the claimant sustained a compensable injury on (date of injury), and render a new decision that the claimant did not sustain a compensable injury on (date of injury).

We reverse the ALJ's determination that the claimant had disability from June 11, 2023, through the date of the CCH and render a new decision that the claimant did not have disability from June 11, 2023, through the date of the CCH.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JEANETTE WARD, PRESIDENT & CEO
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge